

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into Southern California Edison Company's Electric Line Construction, Operation and Maintenance Practices.

Investigation 01-08-029
(Filed August 23, 2001)

Respondent.

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW
JUDGE'S RULING REGARDING EDISON'S MOTION TO STRIKE;
FURTHER SCHEDULE MODIFICATIONS; AND OTHER MATTERS**

1. Summary

This ruling denies Southern California Edison Company's (Edison) November 9, 2001 motion to strike portions of the Order Instituting Investigation (OII). It also sets a modified schedule for responses to Edison's November 19, 2001 motion to compel and motion for extension of its filing deadline. The ruling also modifies the schedule set forth in the scoping memo and directs Consumer Services Division (CSD) to reorganize and re-serve the attachments to the OII.

2. Motion to Strike

Background

On November 9, 2001, Edison filed a motion to strike portions of the OII. Edison requests that Section II, Accidents Involving Violations, be stricken from the OII and replaced with a chart that recites the dates and places Edison allegedly violated Commission General Orders or Rules. Edison bases its request

on statements made by CSD counsel at the Prehearing Conference (PHC) where counsel stated that it was not CSD's desire to have a personal injury "mini-trial" on each of the 37 accidents. Consequently, Edison believes that including the detail of these 37 accidents, involving death and serious injury, is prejudicial to their case and not probative.

CSD opposes the motion. Notwithstanding CSD counsel's statements at the PHC, CSD states that it is now eager to show the relation between the violations and the accidents, and believes Edison took CSD counsel's statements out of context.

Discussion

The Commission rarely entertains motions to strike an OII. Pursuant to Pub. Util. Code § 1701.2(a) and Rules 6 and 6.3 of the Commission's Rules of Practice and Procedure (Rules), the Commission issues a scoping memo which set forth the issues to be addressed. Pursuant to Rule 6(c), Ordering Paragraph 6 of the OII contained the preliminary scoping memo.

The Assigned Commissioner and Administrative Law Judge's (ALJ) October 24, 2001 scoping memo, issued after the PHC pursuant to Rule 6.3, addressed the scope as follows:

"The scope of the proceeding is set out in the OII. At the PHC, the parties discussed the extent to which the hearings might focus on the 37 accidents set forth in the OII. CSD stated that it is not attempting to find a causal link between a violation and an accident occurring.

"This ruling clarifies the scope of the proceeding as it relates to the 37 accidents listed in the OII. Ordering Paragraph 2 of the OII places Edison on notice that it is alleged to have violated the listed General Orders and Rule 1 as detailed earlier in the OII, and that each instance of noncompliance is a separate and distinct violation.

Therefore, inquiry regarding the 37 accidents is appropriate on the issue of whether Edison violated the Commission's General Orders listed in the OII or rule 1 and, if so, the appropriate amount of the penalty.

"At the PHC, CSD mentioned off of the record that it might be able to provide a prehearing brief or statement setting forth the amount of penalties it would be seeking in this OII. To the extent CSD does so before filing its opening brief, it would be useful if CSD filed such a statement together with serving its supplemental testimony on November 14." (Scoping Memo at p. 3.)

If either party seeks to modify the scope of this proceeding, they should seek to modify the scoping memo. Therefore, Edison's motion to strike portions of the OII is denied.

CSD has chosen not to serve supplemental testimony or to file a prehearing brief referenced in the scoping memo. We reiterate that it would be useful and may streamline discovery if CSD were to file a preliminary statement or prehearing brief addressing in more detail the relation between the violations and the accidents, and the impact on CSD's recommended penalties.

3. Modified Briefing Schedule on Motions

On November 19, 2001, Edison also filed two other motions, a Motion to Compel Discovery and a Motion for Extension of Filing Deadline in light of the impact of its motion to compel on the discovery schedule. In a telephone conference with the ALJ, the parties stipulated and the ALJ agreed to a briefing schedule where CSD would respond to these motions by November 28. Both parties later stipulated to an extension of CSD's briefing deadline to December 12, 2001, provided that Edison has until January 18, 2002 to serve its prepared testimony, and that the agreement to these dates does not impact Edison's

pending motion to extend the schedule.¹ The ALJ also agreed to this continuance.

Upon further reflection, we extend the briefing schedule as follows. CSD shall file its response to Edison's two motions no later than December 19, 2001 and Edison may file a reply in support of its motion to compel no later than January 3, 2002.² There will be no reply to Edison's motion for extension of filing deadline.

For the parties' information, we anticipate that either the assigned ALJ, Assigned Commissioner or the Commission, and not the Law and Motion Judge, will handle these motions.

4. Modified Scoping Memo Schedule

Because of the modified briefing schedule set forth above, we further modify the schedule set forth in the scoping memo and provide that Edison's prepared testimony will be due no earlier than February 15, 2002. The remainder of the schedule set forth in the scoping memo is suspended pending resolution of Edison's motions or as further directed by the Assigned Commissioner or ALJ. This schedule change does not impact or prejudge Edison's motion for extension of filing deadline.

5. Other Matters

CSD has divided its voluminous attachment to the OII into the following categories: Accident Reports; GO 165 Inspections; GO 128 Inspections; and GO

¹ The reason for this extension was because of CSD counsel's serious family health problems.

² We provide for a longer than usual reply period in light of the intervening holidays.

95 Inspections. The accident reports are not organized to coincide with the accidents listed in the OII. No later than January 15, 2001, CSD is directed to serve an indexed version of the attachments to the OII organized as follows: A table of contents listing the four main sections listed above, as well as each of the accident reports contained in the first section, with reference to each section (including each accident report) by tab number or letter.³ Each new section or accident report in the attachment should have a corresponding tab on the outside for easy reference. We anticipate that this version of the attachment can be used as a formal exhibit.

IT IS RULED that:

1. Southern California Edison Company's (Edison) November 9, 2001 motion to strike portions of the Order Instituting Investigation (OII) is denied.
2. The modified briefing schedule set forth in Section 3 of the ruling is adopted. Specifically, CSD shall file its response to Edison's November 19, 2001 Motion to Compel Discovery and Motion for Extension of Filing Deadline no later than December 19, 2001, and Edison may file a reply in support of its Motion to Compel no later than January 3, 2002. There will be no reply to Edison's Motion for Extension of Filing Deadline
3. The modified schedule for this proceeding is as set forth in Section 4 of this ruling.

³ The accident reports should be organized to coincide with the summary in the OII or in another accessible fashion.

4. CSD shall reorganize its attachment to the OII as set forth in Section 5 of this ruling

Dated December 6, 2001, at San Francisco, California.

/s/ HENRY M. DUQUE
Henry M. Duque
Assigned Commissioner

/s/ JANET A. ECONOME
Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judge's Ruling Regarding Edison's Motion to Strike; Further Schedule Modifications; and Other Matters on all parties of record in this proceeding or their attorneys of record.

Dated December 6, 2001, at San Francisco, California.

/s/ JACQUELINE GORZUCH
Jacqueline Gorzoch

N O T I C E

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